



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 17, 2022

IN THE MATTER OF:

Appeal Board No. 625098

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective November 17, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 17, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed June 28, 2022 (), the Administrative Law Judge sustained the initial determination of voluntary separation from employment without good cause.

The claimant applied to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and reconsideration of the Judge's decision. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Our review of the record reveals that the case should be remanded to hold a hearing. Prior to the hearing, the employer had requested an adjournment because its witness was not available. The employer should be given an opportunity to appear and provide testimony and evidence concerning the circumstances of how the claimant's employment ended. Further, the claimant

should produce medical documentation from her doctor detailing the claimant's medical condition, whether the doctor advised the claimant not to receive the COVID-19 vaccines in Fall 2021, and, if so, what reason(s) was such advice given to the claimant. The Judge should take additional testimony and evidence as needed to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the claimant should produce medical documentation from her doctor detailing the claimant's medical condition, whether the doctor advised the claimant not to receive the COVID-19 vaccines in Fall 2021, and, if so, what reason(s) was such advice given to the claimant; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER